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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,444

04/01/2005

Christian Bumm

23265

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535 7590 08/05/2009

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EXAMINER

BRUNSMAN, DAVID M

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

08/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/530,444	<b>Applicant(s)</b> BUMM ET AL.	
	<b>Examiner</b> David M. Brunzman	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 9,10,12-17 and 21-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8,11,18-20 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-37 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Applicant's response of 5-1-2009 constitutes a clear and complete response to the requirement for restriction and election of species. Applicant's elect the invention comprising a sprayable coating agent comprising preground, non-sieved granules of pulp cellulose and a colorant. Claims reading on the elected invention are 1-8, 11, 18-20 and 37.

The instant claims have been carefully construed. Independent claim 1 recites a sprayable coating agent in the form of granules. These granules are delimited by their ingredients, method of forming and properties including density, moisture content, bulk density and particle size distribution. In the recitation of claim 1 the "additives and auxiliaries are included as components of the granules. The instant claims are construed by the examiner as directed to granules comprising cellulose pulp and a colorant having the properties recited. While claim 1 recites a method of making the granules (compacted to form a pressed piece and subsequently ground up), the claims being directed to a product would be anticipated by another product having similar composition and property but, made by a different method, absent evidence of materially different results.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8, 11, 18-20 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of claim 37 "comprising a mixture of [granules], and a colorant as the auxiliary or additive material" renders the scope of the claims indefinite. While a careful reading of base claim 1 renders the invention as directed to granules of a mixture, claim 37 appears to broaden the scope of the claims to include mixtures of granules and said auxiliary or additive.

Claim 18 is indefinite in the use of the term "familiar" as it fails to define which auxiliaries or additives fall within its scope. Claim 19 is indefinite in that it is not clear how it further limits claim 1 in that the Markush group member "organic or inorganic substances" is universal. Claim 20 is similarly indefinite with use of the member "white or colored". Claim 4 is indefinite by use of the units "g/l".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 8, 11, 18-20 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Ilyina et al.

Ilyina et al is cited as evidence that the commercial product Biodac® 12/20 Mesh was in public use at least as early as 2000. The two product brochures provided (designated "Biodac®" and "Biodac® 12/20 Mesh") provide factual evidence of the composition and properties of the commercial material. On average the granules comprise 50% paper fiber , 31% kaolin, 17% calcium carbonate (colorant) and <1% titanium dioxide (colorant). The product has a moisture content of less than 2%

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(anticipating the lower limit of claim 3) and a bulk density of 43 lbs/cu.ft (anticipating the range recited in claim 4. The mesh sizes recited as particle size distribution correspond to less than 1% 2000 microns or more, at least 80% from 841-1680 microns and, less than 10% of 388 microns or less. This distribution clearly anticipates that recited in claim 1. With respect to claim 2, the density of the materials making up than granules ranging from 1-3 g/cm<sup>3</sup> and the liquid holding capacity suggesting a porosity of similar order, indicate a individual granule density falling within the range recited. With respect to claim 37, the limitation "non-sieved" does not materially distinguish the instant claim from the product of the reference. Whichever method of arriving at a desired particle size is used, the product obtained still exhibits the recited distribution.

Claims 5 and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunsman whose telephone number is 571-272-1365. The examiner can normally be reached on M, Th, F, Sa; 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David M Brunsman/  
Primary Examiner, Art Unit 1793

DMB